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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/839,357	04/23/2001	Hiroyuki Kato	010408	2303

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EXAMINER

JASTRZAB, KRISANNE MARIE

ART UNIT PAPER NUMBER

1744

DATE MAILED: 02/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

LD

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

09/839,357

Applicant(s)

KATO ET AL.

Examiner

Krisanne Jastrzab

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**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 01 February 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The reply was filed after the date of filing a Notice of Appeal, but prior to the date of filing an appeal brief. The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).


4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: \_\_\_\_\_.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s): \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

  
Krisanne Jastrzab  
Primary Examiner  
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***Response to Arguments***

Applicant's arguments filed 2/1/2005 have been fully considered but they are not persuasive.

Applicant argues that Akinari et al., teach the use of a quaternary ammonium having a given general formula as presented in the abstract, and that cetyl pyridinium chloride does not meet that formula, however the Examiner would point out that Akinari et al. wasn't solely relied upon for the teaching of the efficacy of cetyl pyridinium chloride, but that Akinari et al., specifically recite the use of dimethyldidecylammonium chloride and Vaughn et al., teach the equivalence of cetyl pyridinium chloride and dimethyldidecylammonium chloride (see column 2, line 60 through column 3, line 16, and column 4, lines 1-3 of Vaughn et al.), thus making the substitution of cetyl pyridinium chloride for dimethyldidecylammonium chloride in Akinari et al., properly obvious.

Applicant further argues that the use of cetyl pyridinium chloride in the instant invention is for a purpose different from that in Akinari et al., because the claimed invention is directed to the prevention of the propagation of protista and Akinari et al., address iron bacteria, however, the Examiner would maintain that "bacteria" fall within the category of "protista" and that the combination of references clearly support the efficacy in the inhibition of bacterial and fungal activity (see column 3, lines 44-55 of Vaughn et al.).

Applicant also argues that the composition presented in Akinari et al., is inferior to the claimed composition and that the instant specification supports the discovery of

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unexpected results with the use of cetyl pyridinium chloride based on the results cited in Fig. 1 of the instant specification, however, the Examiner would continue to maintain that the allegation of unexpected results is not properly supported by the instant specification. The claimed invention requires sustained release efficacy for 2 months and Fig. 1 clearly shows that all compositions met this requirement and explicitly states that "all of preparations have excellent efficiency as anti-protista preparations". See page 12, lines 22-29 of the instant specification.

Finally, Applicant argues that the sustained release of Vaughn et al., differs from that claimed because the biocide in the instant claims is kneaded with the polymer and thereby physically fixed thereto, but that the biocide in Vaughn et al., is cationically bound to the polymer, and the Examiner would maintain that while Vaughn et al., do teach the biocide being bound to the polymer, it does not exclude physical binding nor do the instant claims exclude ionic binding, and in fact Vaughn et al., teach that it is preferred that the biocide be uniformly distributed *throughout* the polymer and that the combination is formed with melt blending which physically binds the biocide to the polymer. See column 2, lines 35-30, and column 3, lines 15-23 and 38-42 of Vaughn et al.

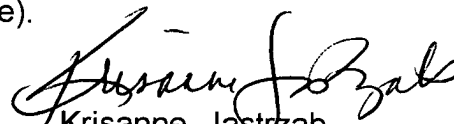
### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Krisanne Jastrzab whose telephone number is 571-272-1279. The examiner can normally be reached on Mon.-Wed. 6:30am-4:00pm and alternate Fridays.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert J. Warden can be reached on 571-272-1281. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Krisanne Jastrab  
Primary Examiner  
Art Unit 1744

February 12, 2005